

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*	Docket Number:
	*	1:22-CR-00035-JLS-HKS-1
	*	
	*	Buffalo, New York
v.	*	April 18, 2022
	*	2:01 p.m.
	*	
LUKE MARSHALL WENKE,	*	PLEA HEARING
	*	
Defendant.	*	
	*	
* * * * *	*	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

MICHAEL DiGIACOMO,
UNITED STATES ATTORNEY,
By DAVID J. RUDROFF, ESQ.,
Assistant United States Attorney,
Federal Centre,
138 Delaware Avenue,
Buffalo, New York 14202,
Appearing for the United States.

For the Defendant:

FEDERAL PUBLIC DEFENDER'S OFFICE
By ALEXANDER J. ANZALONE, ESQ.,
Assistant Federal Public Defender,
300 Pearl Street,
Suite 200,
Buffalo, New York 14202.

The Courtroom Deputy:

KIRSTIE L. HENRY

1 The Court Reporter: BONNIE S. WEBER, RPR,
2 Notary Public,
3 Robert H. Jackson Courthouse,
4 2 Niagara Square,
5 Buffalo, New York 14202,
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9 Proceedings recorded by mechanical stenography,
10 transcript produced by computer.

11 (Proceedings commenced at 2:01 p.m.)

12 **THE CLERK:** All rise.

13 The United States District Court for the Western
14 District of New York is now in session, The Honorable John
15 Sinatra presiding.

16 **THE COURT:** Please be seated.

17 **THE CLERK:** In the United States versus Luke Wenke,
18 Case Number 21-CR-35. This is the date set for a plea hearing.
19 Counsel, please state your appearances for the record.

20 **MR. RUDROFF:** Good afternoon, Your Honor. David
21 Rudroff for the Government.

22 **MR. ANZALONE:** Good afternoon, Your Honor. Alexander
23 Anzalone from the Federal Defender's Office on behalf of
24 Mr. Wenke. Mr. Wenke is to my left in custody.

25 **THE COURT:** Good afternoon, Counsel.

Good afternoon, Mr. Wenke.

1 Mr. Anzalone, I understand that Mr. Wenke is here
2 today to enter a guilty plea pursuant to the plea agreement
3 presented and signed today; is that correct?

4 **MR. ANZALONE:** Yes, Your Honor.

5 **THE COURT:** Mr. Rudroff, have there been any changes
6 to the draft agreement provided to my chambers April 14th?

7 **MR. RUDROFF:** Your Honor, there have been no
8 substantive changes. There was one typographical error that was
9 corrected in the headings.

10 **THE COURT:** All right. The signed plea agreement will
11 be incorporated into and made a part of this proceeding.

12 Mr. Rudroff, have victims been notified of today's
13 proceeding?

14 **MR. RUDROFF:** Yes, Your Honor.

15 **THE COURT:** Mr. Wenke, before I accept your guilty
16 plea, I want to be sure that you are fully informed of your
17 rights and that you understand those rights; the nature of this
18 proceeding here today, and the consequences to you of pleading
19 guilty.

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** If you don't understand something I say or
22 a question that I ask, please tell me and I'll try to make it
23 clearer.

24 And please stop me at any time you need to talk to
25 your lawyer and I'll accommodate that, okay?

1 **THE DEFENDANT:** Yes, Your Honor.

2 **THE COURT:** Would you please stand and raise your
3 right hand to take the oath.

4

5 **LUKE MARSHALL WENKE, DEFENDANT, SWORN**

6

7 **THE DEFENDANT:** I do. Thank you.

8 **THE COURT:** Please be seated.

9 Mr. Wenke, do you speak, read and understand English?

10 **THE DEFENDANT:** Yes, I do.

11 **THE COURT:** You just took on oath that you would
12 answer my questions here today truthfully.

13 If you say something that's not true, that statement
14 may be used against you later in a separate criminal
15 prosecution, such as for perjury or for making a false statement
16 or it may result in other consequences from this Court.

17 Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Do you understand you have the right to
20 remain silent and not to answer any of my questions?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** Do you want to answer my questions and
23 give up that right?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Okay. Mr. Anzalone, do you join in that?

1 **MR. ANZALONE:** I do.

2 **THE COURT:** Mr. Wenke, what's your full name?

3 **THE DEFENDANT:** Luke Marshall Wenke.

4 **THE COURT:** And where were you born?

5 **THE DEFENDANT:** In Dunkirk, New York.

6 **THE COURT:** When were you born?

7 **THE DEFENDANT:** April 15, 1992.

8 **THE COURT:** Okay. How old does that make you?

9 **THE DEFENDANT:** I just turned 30 three days ago.

10 **THE COURT:** Are you married?

11 **THE DEFENDANT:** No.

12 **THE COURT:** Do you have children?

13 **THE DEFENDANT:** No.

14 **THE COURT:** How far along in school did you go?

15 **THE DEFENDANT:** I graduated from Salamanca High School

16 and then I did three semesters at Jamestown Community College.

17 **THE COURT:** So you're able to read?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Were you able to read the entire plea
20 agreement that you signed in full, by yourself, before you
21 signed it?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Are you a U.S. citizen?

24 **THE DEFENDANT:** Yes, I am.

25 **THE COURT:** What was your most recent employment?

1 **THE DEFENDANT:** Employment, Lyft. It's a different
2 Uber.

3 **THE COURT:** Okay. Are you currently seeing a doctor
4 to for any physical or mental condition that could affect your
5 ability to read, communicate, make decisions or to understand
6 these proceedings here today?

7 **THE DEFENDANT:** No, I'm not.

8 **THE COURT:** Do you have any mental condition or
9 disability that would prevent you from fully understanding the
10 charges against you or the consequences of your guilty plea?

11 **THE DEFENDANT:** No, I do not.

12 **THE COURT:** Have you recently been treated for mental
13 illness or addiction to narcotics?

14 **THE DEFENDANT:** No.

15 **THE COURT:** Are you currently under the influence of
16 any drug, medication or alcohol?

17 **THE DEFENDANT:** No.

18 **THE COURT:** Is there any medication that your doctor
19 wants you to take that you're not taking?

20 **THE DEFENDANT:** No.

21 **THE COURT:** Is there any reason we should not proceed
22 with this change of plea hearing today?

23 **THE DEFENDANT:** No.

24 **THE COURT:** Mr. Anzalone, did you speak with Mr. Wenke
25 about this proceeding today?

1 **MR. ANZALONE:** I did, Your Honor.

2 **THE COURT:** Do you have any reason to believe that he
3 should not proceed with this plea today?

4 **MR. ANZALONE:** No, I don't.

5 **THE COURT:** And do you believe that he's competent to
6 proceed?

7 **MR. ANZALONE:** Yes, I do.

8 **THE COURT:** Did you share with your client all formal
9 plea offers by the Government?

10 **MR. ANZALONE:** Yes, Your Honor.

11 **THE COURT:** Mr. Wenke, did you speak with your lawyer
12 about the charges against you, your rights, the proposed plea
13 agreement and your options?

14 **THE DEFENDANT:** Yes, I did.

15 **THE COURT:** Are you satisfied with the advice and
16 counsel that you've received from Mr. Anzalone?

17 **THE DEFENDANT:** Yes, I am.

18 **THE COURT:** Based on the observations of Mr. Wenke and
19 his lawyer and my observations -- excuse me.

20 Based on the statements of Mr. Wenke and his lawyer
21 and my observations, I find that Mr. Wenke is in full possession
22 of his faculties and is competent to proceed.

23 Next, regarding the Due Process Protections Act and
24 Rule 5(f)(1), both of those require me to direct the prosecution
25 to comply with its obligation under Brady versus Maryland and

1 its progeny, to disclose to the defense all information, whether
2 admissible or not, favorable to the defendant; material to
3 either guilt or punishment; and known to the prosecution.

4 Possible consequences for noncompliance may include
5 dismissal of individual charges or the entire case; exclusion of
6 evidence and professional discipline or Court sanctions on the
7 attorneys responsible.

8 I'm going to be entering that order. I'm going to
9 sign it now. That fully describes the obligation and the
10 possible consequences. And I'm directing the prosecution to
11 review and comply with the order.

12 In the meantime, Mr. Rudroff, do you confirm that the
13 Government has, to your understanding, fulfilled its
14 obligations?

15 **MR. RUDROFF:** Yes, Your Honor.

16 **THE COURT:** Mr. Wenke, have you received a copy of the
17 indictment, which is the written statement of the charges
18 against you?

19 **THE DEFENDANT:** Yes, I have.

20 **THE COURT:** In Count One of that indictment, the Grand
21 Jury charges that, between on or about September 22, 2020, and
22 January 24, 2022, in the Western District of New York and
23 elsewhere, the defendant -- that is, you, Luke Marshall Wenke --
24 with the intent to harass and cause substantial emotional
25 distress to Victim One, a person known to the Grand Jury, did

1 use an interactive computer service and a facility of interstate
2 and foreign commerce to engage in a course of conduct that
3 placed Victim One in reasonable fear of the death of or serious
4 bodily injury to Victim One or that caused, attempted to cause,
5 and would reasonably be expected to cause substantial emotion
6 distress to Victim One, all in violation 18 U.S.C., Sections
7 2261A(2) (a) and 2261A(2) (b) .

8 You have several Constitutional rights that you'll be
9 giving up if you plead guilty to that count and I'll discuss
10 those with you now.

11 You have the right to plead not guilty to any offense
12 charged against you and to persist of that plea throughout the
13 process.

14 In fact, earlier in the case, you entered the plea of
15 not guilty to all charges and you have the right to continue and
16 persist in that plea.

17 You have the right to a speedy and public trial. You
18 have the right to a jury trial. And at that trial, you would
19 have the right to participate in selecting the jury from members
20 of the community.

21 At trial, you would be presumed innocent. The
22 Government would have to prove your guilt by proving each
23 element of each count beyond a reasonable doubt.

24 The jury would have to be unanimous. In particular,
25 the jurors would have to reach a unanimous verdict on this Count

1 One to convict you of cyberstalking.

2 If both you and the Government gave up the right to a
3 jury trial, you would have the right to be tried by the Court,
4 and that means by me.

5 You have right to be represented by counsel and to
6 have your lawyer assist with your defense.

7 You have that right at trial and at every other stage
8 of the proceedings against you, including any appeal.

9 If you can't afford a lawyer, the Court will appoint
10 one for you free of charge, to assist you at trial and at every
11 other stage of the proceeding.

12 At trial, you have the right to confront and
13 cross-examine the witnesses against you, which means you have
14 the right to see the witnesses, hear them testify and have them
15 questioned by your lawyer.

16 You have the right to present a defense at trial,
17 including the right to testify on your own behalf, present
18 evidence, call witnesses to testify and have witnesses
19 subpoenaed and required to come to Court to testify on your
20 behalf.

21 You also have the right to be protected from compelled
22 self-incrimination, which means you have the right to remain
23 silent and not to testify at trial. No one can force you to
24 testify or to incriminate yourself.

25 If you plead guilty, you give up the right to be

1 protected from compelled self-incrimination and you will be
2 incriminating yourself.

3 If you went to trial and were convicted, you would
4 have the right to appeal to your conviction and your sentence.

5 If you plead guilty and if I accept your guilty plea,
6 you will waive each of these rights.

7 In particular, if you plead guilty, you agree that
8 this is your day in Court and there will be no trial.

9 Pleading guilty will have the same effect to you as if
10 you went to trial and the jurors reached a unanimous guilty
11 verdict as to this charge.

12 By pleading guilty, you waive all of these rights,
13 including your right to appeal, except for a very limited right
14 to appeal your sentence and we'll talk about that later.

15 Do you understand all of that?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Did your lawyer advise you of all the
18 rights I just described?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Do you understand those rights?

21 **THE DEFENDANT:** Yes, I do.

22 **THE COURT:** Do you have any questions about them?

23 **THE DEFENDANT:** No, I do not.

24 **THE COURT:** Do you need more time to speak to your
25 lawyer about those rights?

1 **THE DEFENDANT:** No.

2 **THE COURT:** Do you want to give up those rights?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** All right.

5 Mr. Anzalone, are you satisfied that Mr. Wenke is
6 waiving these rights knowingly, voluntarily and intelligently?

7 **MR. ANZALONE:** Yes, Your Honor.

8 **THE COURT:** Do you join and agree with each waiver?

9 **MR. ANZALONE:** I do.

10 **THE COURT:** Okay. We're going to look over the plea
11 agreement now.

12 Mr. Wenke, did you sign this plea agreement on
13 page 12?

14 **THE DEFENDANT:** Yes, I did.

15 **THE COURT:** And did you read it before you signed it?

16 **THE DEFENDANT:** Yes, I did.

17 **THE COURT:** Did you discuss the plea agreement with
18 your lawyer before you signed it?

19 **THE DEFENDANT:** Yes, I did.

20 **THE COURT:** Do you understand everything in this
21 agreement?

22 **THE DEFENDANT:** Yes, I do.

23 **THE COURT:** Do you agree with everything in it?

24 **THE DEFENDANT:** I do agree.

25 **THE COURT:** Do you have any questions about this

1 agreement?

2 **THE DEFENDANT:** I do not.

3 **THE COURT:** Do you need more time to discuss it with
4 your lawyer?

5 **THE DEFENDANT:** No, I do not.

6 **THE COURT:** Do you understand that I am not a party to
7 this agreement, which means I'm not bound by its terms?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Other than what's contained on the pages
10 of the written plea agreement that you signed, did anyone make
11 any promises, representations or guarantees to you to try to get
12 you to plead guilty?

13 **THE DEFENDANT:** No.

14 **THE COURT:** Other than what's contained in the written
15 plea agreement that you signed and other than a general
16 discussion of the sentencing guidelines and other sentencing
17 considerations with your lawyer, did anyone promise you leniency
18 or a particular sentence or any other incentive to get you to
19 plead guilty?

20 **THE DEFENDANT:** No.

21 **THE COURT:** Is anyone forcing you to plead guilty?

22 **THE DEFENDANT:** No.

23 **THE COURT:** Did anyone try to threaten you, someone in
24 your family or someone close to you to get you to plead guilty?

25 **THE DEFENDANT:** No.

1 **THE COURT:** Whether to plead guilty is your decision.
2 Not your lawyer's.

3 You should do what you want to do, not what you think
4 your lawyer wants you to do and not what you think anyone else
5 wants you to do.

6 Do you understand that?

7 **THE DEFENDANT:** Yes, I do.

8 **THE COURT:** Is your decision to plead guilty here
9 today voluntary and of your own free will?

10 **THE DEFENDANT:** Yes, it is.

11 **THE COURT:** You're agreeing to plead guilty to one of
12 the charges against you.

13 That is Count One of the indictment which alleges that
14 you violated 18, United States Code, 2261(a)(2)(A) and
15 2261(a)(2)(B), cyberstalking, which is a felony.

16 I'd now like to explain the elements of this charge.
17 And the Government would have to prove these elements beyond a
18 reasonable doubt if the case went to trial:

19 First, that you used a facility of interstate or
20 foreign commerce.

21 Second, that you engaged in the course of conduct with
22 the intent to harass or intimidate the victim, R.G.

23 Third, that as a result of that course of conduct,
24 R.G. was placed in reasonable fear of the death of or serious
25 injury to himself or that the course of conduct caused,

1 attempted to cause or would reasonably be expected to cause R.G.
2 to experience substantial emotional distress.

3 Do you understand the nature of the charge against
4 you?

5 **THE DEFENDANT:** Yes, I do.

6 **THE COURT:** And do you understand the elements of the
7 charge that I just explained?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** Did you discuss the charge and its
10 elements with your lawyer?

11 **THE DEFENDANT:** Yes, we did.

12 **THE COURT:** Do you have any questions about the charge
13 or its elements?

14 **THE DEFENDANT:** No, I do not.

15 **THE COURT:** Were you advised of the maximum penalties
16 for this charge?

17 **THE DEFENDANT:** Yes, I was.

18 **THE COURT:** In paragraph one of the agreement, you'll
19 see that the maximum possible sentence is a term of imprisonment
20 of five years, a fine of \$250,000 and a term of supervised
21 release of three years. And then, there's also a mandatory
22 \$100 special assessment.

23 Do you understand these maximum penalties?

24 **THE DEFENDANT:** Yes, I do.

25 **THE COURT:** Supervised release is a form of

1 post-imprisonment supervision. It does not replace a portion of
2 the sentence of imprisonment.

3 Instead, it's an order of supervision in addition to
4 any term of imprisonment that I may impose.

5 During any term of supervised release you must comply
6 with certain terms and conditions that I set and that the
7 probation office sets with my approval.

8 Do you understand that?

9 **THE DEFENDANT:** Yes, I do.

10 **THE COURT:** Do you understand that if you're placed on
11 supervised release and if I find by a preponderance of the
12 evidence that you violated a condition of that release, you may
13 be returned to prison for all or part of the term of supervised
14 release, up to two years without time -- without credit for time
15 previously served on supervised release?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Do you understand that if that happens --
18 if you violate a condition of supervised release -- you could
19 end up serving more time in prison than set forth in the
20 statutory maximum?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** I don't know if you're currently on
23 parole, probation or supervised release in some other criminal
24 case.

25 If you are, today's guilty plea may provide a basis

1 for revoking that parole, probation or supervised release. As a
2 result, you may be returned to prison on that other case, if
3 there is one.

4 Do you understand that?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Parole no longer exists in the Federal
7 system; so if you're sent to prison, you will not be released on
8 parole.

9 Do you understand that?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** You are pleading guilty here today to
12 felony offense.

13 If I accept your plea, I will find you guilty and you
14 may lose value civil rights. For example, the rights to vote,
15 to hold public office, to serve on a jury and to possess a
16 firearm.

17 Do you understand that?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** Next let's talk about restitution, which I
20 think is covered in 18 through 25.

21 Mr. Rudroff, would you summarize the restitution
22 paragraphs for us?

23 **MR. RUDROFF:** Yes, Your Honor. Paragraph 18, the
24 defendant understands that the Court must impose restitution in
25 this case.

1 And that he will not be entitled to withdraw his
2 guilty plea based on whatever amount of restitution is imposed
3 by the Court.

4 Paragraph 19, the defendant agrees that he won't
5 oppose bifurcation of sentencing in the event that the victim's
6 losses are not ascertainable at the time of sentencing.

7 Paragraph 20, the defendant agrees to disclose all of
8 his assets and make complete financial disclosure to the United
9 States to be used in the enforcement of any financial penalties
10 in this case.

11 He also agrees to provide releases for all of his
12 financial information.

13 Paragraph 21, the defendant understands that all
14 monetary penalties that are imposed in this Court will be due
15 and payable immediately upon sentencing.

16 That they'll be subject to immediate enforcement. And
17 that they will be submitted to the Treasury Offset Program for
18 potential enforcement.

19 Paragraph 22, the defendant agrees that any payment
20 schedule set by the Court is merely a minimum and that it does
21 not limit the enforcement methods available to the U.S.

22 Paragraph 23, the defendant agrees that any assets
23 that are seized or restrained by the United States may be used
24 to offset financial obligations that are imposed as a part of
25 his sentence.

1 Paragraph 24, the defendant agrees that the District
2 Court Clerk will release any funds that have been posted as
3 security for his appearance in this case.

4 And that they will be applied to satisfy any financial
5 obligations imposed by the Court.

6 Paragraph 25, the defendant understands that voluntary
7 payment of restitution in this case may be a factor considered
8 whether or not the defendant has accepted responsibility in this
9 case.

10 **THE COURT:** Thank you, Mr. Rudroff.

11 Have there been any requests for restitution so far?

12 **MR. RUDROFF:** Your Honor, there have been none so far.

13 **THE COURT:** Mr. Wenke, do you understand what the
14 prosecutor just said regarding those paragraphs?

15 **THE DEFENDANT:** Yes, I do.

16 **THE COURT:** Do you understand, Mr. Wenke, that you
17 will not be entitled to withdraw your guilty plea based on any
18 restitution amount that I order?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** I may order you to provide notice of your
21 conviction to victims of the offense and to bear the cost of
22 that notice.

23 Do you understand that?

24 **THE DEFENDANT:** Yes, I do.

25 **THE COURT:** Did you discuss the facts of your case,

1 possible defenses and the possible punishment with your lawyer?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Did you tell your lawyer everything that
4 you know about your case?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** In paragraph four of the agreement, you
7 and the Government agree to certain facts regarding the charge
8 that you plan to plead guilty to.

9 Mr. Rudroff, please summarize or read the facts the
10 Government would be prepared to prove if it case were to go to
11 trial.

12 **MR. RUDROFF:** If this case were to go to trial, the
13 Government would be prepared to prove that between on or about
14 January 23, 2022 and on or about January 24, 2022 -- excuse me.

15 Between on or about September of 2020 and January 24th
16 of 2022, the defendant knowingly used a facility of interstate
17 commerce to facilitate communications containing threats to
18 injure R.G. in Minnesota.

19 R.G. is a criminal defense attorney who represents an
20 acquaintance of the defendant in a criminal matter in the
21 District of Minnesota.

22 And beginning in September of 2020, the defendant grew
23 dissatisfied with the representation that R.G. provided to his
24 acquaintance and began to issue harassing and threatening
25 communications to R.G., which included e-mails, telephone calls,

1 Internet reviews and physical letters, all of which traveled in
2 interstate commerce.

3 Between September 22nd, 2020 and January 24th, 2022,
4 the defendant sent R.G. more than 76 e-mails; at least one
5 voicemail; made two phone calls to R.G.'s law firm and attempted
6 to visit the law firm in person on one occasion, in addition to
7 the numerous fake internet reviews of R.G.'s law firm that he
8 posted.

9 Several of the communications referenced the
10 defendant's possession of firearms and/or his familiarity with
11 explosives.

12 On or about January 23rd, 2022, the defendant sent
13 R.G. an e-mail in which he stated, among other things, quote:
14 "They say men respect each other after a fight.

15 I will gladly take a steel chair to your face until I
16 get what I want here. You don't remember me, but you will. I
17 am the dom and you are the bitch right now.

18 Two very simple demands need to be met to finally
19 change course from this perpetual bullshit largely incited by
20 your miscalculations."

21 On January 24th, 2022, the defendant sent another
22 e-mail to R.G. in which he stated, among other things, this
23 fight -- excuse me.

24 Quote: "This fight will happen. Do not fear and do
25 not worry. Do not cross certain lines. Oh, boy, do I have work

1 to do tomorrow."

2 On January 24th, 2022, the defendant sent another
3 e-mail to R.G. in which he stated, among other things, quote:
4 Bam bam, pow pow. R.G. the comic book lawyer wants to fight
5 Luke Wenke.

6 The e-mail attached a photo depicting an aerial view
7 of R.G.'s residence. These e-mails were sent by the defendant
8 in the Western District of New York to R.G. in the state of
9 Minnesota.

10 At the time that the defendant sent the e-mails to
11 R.G., he did so with the intent to harass and intimidate R.G.

12 And as a result of the defendant's conduct, R.G. was
13 placed in reasonable fear of death or bodily injury and was
14 caused substantial emotional distress.

15 **THE COURT:** Mr. Wenke, do you understand what the
16 prosecutor just said?

17 **THE DEFENDANT:** Yes, I do.

18 **THE COURT:** Is everything that he said about you, your
19 conduct and your intent true?

20 **THE DEFENDANT:** Yes, it is.

21 **THE COURT:** Mr. Rudroff, how would the Government
22 prove those facts at trial, if there were a trial?

23 **MR. RUDROFF:** Your Honor, if there were a trial, the
24 Government would call agents of the Federal Bureau of
25 Investigations who would testify regarding their investigation

1 of this case.

2 Among other things, those agents would introduce
3 evidence from the Federal search warrants that were obtained
4 regarding the contents of the defendant's electronic devices,
5 specifically his cell phone and the several e-mail accounts that
6 he controlled.

7 The Government would introduce into evidence the
8 contents of those e-mail accounts and electronic devices, which
9 would establish the communications that were just referenced,
10 including the three or four e-mails on January 22rd, 2022, and
11 January 24th, 2022.

12 Additionally, that evidence would establish that the
13 defendant had sent at least 76 e-mails, but likely many more, to
14 the victim, R.G., between September 22, 2020, and January 24,
15 2022.

16 Several of the e-mails would reference the defendant's
17 possession of firearms and his familiarity with explosives.

18 The Government would introduce evidence through the
19 manager of the firearm store, an FFL here, in the Western
20 District of New York, who had established that the defendant
21 had, in fact, actually taken steps to obtain an operable firearm
22 in September and November of 2021, during the time at issue,
23 when he was sending these communications to R.G.

24 The Government would also call R.G., several members
25 of his family and several employees of the law firm, who would

1 all testify as to R.G.'s response to this course of conduct; his
2 behavior in the aftermath of receiving these e-mails.

3 They would establish that R.G. was distressed; that he
4 was concerned, intimidated. That he feared bodily harm and that
5 he experienced substantial emotional distress.

6 They would testify that R.G. not only changed his work
7 habits. That he at one time sent his family to live in another
8 location, away from their home.

9 That he had taken additional security measures at
10 work, including posting the defendant's picture among security
11 desks, including a security system, including a doorbell and a
12 buzzer system that he had never had to use before.

13 And several members of his staff had, in fact,
14 considered quitting their jobs or taking other measures in
15 response to the defendant's conduct.

16 **THE COURT:** Mr. Wenke, do you understand what the
17 prosecutor just said?

18 **THE DEFENDANT:** Yes, I do.

19 **THE COURT:** Are you pleading guilty here today because
20 you did the things that the plea agreement says that you did and
21 that are charged in Count One of the indictment?

22 **THE DEFENDANT:** Yes, I am.

23 **THE COURT:** In your own words now, Mr. Wenke, tell me
24 what it is you did that makes you believe you're guilty of Count
25 One.

1 **MR. ANZALONE:** Your Honor, if I could just have one
2 moment, please?

3 **THE COURT:** You may.

4 **THE DEFENDANT:** I very inappropriately treated R.G.
5 and dehumanized him and carried on for way too long. And
6 definitely harassed him over e-mails for longer than ever should
7 have happened.

8 **THE COURT:** Did you do that with the intent to harass
9 or intimidate that person?

10 **THE DEFENDANT:** Yes, I did.

11 **THE COURT:** Is the Government satisfied with that
12 factual basis?

13 **MR. RUDROFF:** Yes, Your Honor. That factual basis,
14 together with what's included in the plea agreement.

15 **THE COURT:** Okay. Paragraphs five through 12 of the
16 agreement deal with the sentencing guidelines.

17 I understand, Mr. Wenke, that you and the Government
18 have agreed to a specific sentence in this case, which I would
19 impose if I accepted the plea agreement at a later date, and
20 we'll get to that.

21 First, we'll have to discuss the sentencing
22 guidelines.

23 The U.S. Sentencing Commission issues guidelines that
24 I must consult and take into account when determining sentences.

25 Mr. Wenke, if you plead guilty or are convicted after

1 trial, I will calculate and consider the applicable sentencing
2 guidelines range and also consider sections of the guidelines
3 concerning upward or downward departures.

4 I must consider these guidelines, but they're advisory
5 only, which means I'm not with bound to follow them when
6 determining your sentence.

7 Do you understand that?

8 **THE DEFENDANT:** Yes.

9 **THE COURT:** When determining your sentence, I also
10 will consider all of the sentencing factors in the statute,
11 which is 18 United States Code, Section 3553(a).

12 Those factors include the nature and circumstances of
13 the offense; your own history and characteristics; the need for
14 the sentence to reflect the seriousness of the offense.

15 Promote respect for the law, and provide a fair
16 punishment; the need to deter others from committing crimes and
17 to protect the public from your crimes.

18 The need provide you with educational or vocational
19 training, medical care or other correctional treatment; the
20 kinds of sentences available.

21 Any policy statements issued by the Sentencing
22 Commission; sentences given to others who committed crimes
23 similar to the one that you're planning to plead guilty to; and
24 the need to provide restitution to victims.

25 Do you have any questions about those factors?

1 **THE DEFENDANT:** No, I do not.

2 **THE COURT:** Did you and your lawyer talk about how
3 those factors and the guidelines might be applied in your case?

4 **THE DEFENDANT:** Yes, we did.

5 **THE COURT:** Do you understand that the conduct used to
6 compute your guidelines range will include both the conduct to
7 which you pleading guilty and relevant conduct that may involve
8 counts that are dismissed or were never charged?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** There might be other relevant conduct,
11 conduct that we're not even thinking about right now, that might
12 affect your sentencing guidelines range.

13 Do you understand that?

14 **THE DEFENDANT:** Yes.

15 **THE COURT:** If I accept your guilty plea, a
16 presentence report will be prepared before you are sentenced.

17 You and the Government will have a chance to review
18 the report, to challenge the reported facts and the guidelines
19 range calculation, and to suggest that I consider -- consider
20 other factors consistent with the plea agreement.

21 Do you understand that?

22 **THE DEFENDANT:** Yes.

23 **THE COURT:** Neither I nor your lawyer will be able to
24 determine the guidelines range for your case until the
25 presentence report has been prepared.

1 Do you understand that?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** In paragraph six through nine of the
4 agreement, you and the Government agree to guidelines
5 calculations.

6 And in paragraph nine, you and the Government agree to
7 a specific -- agree that a specific guidelines range would
8 apply.

9 And that is that the guidelines could would call for a
10 sentence of 18 to 24 months of imprisonment, plus a fine of
11 between \$7,500 and \$75,000, plus a period of supervised release
12 of one to three years.

13 Do you understand that I can accept this calculation,
14 but I can also reject the calculation and find another
15 guidelines calculation on my own?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** All right. Next, we'll talk about the
18 Rule 11(c) (1) (C) plea agreement that you and the Government
19 have. That's covered in paragraph ten.

20 And there, you'll see that you and the Government
21 agree that the Court should impose a specific sentence of
22 imprisonment of 18 months.

23 If you enter a guilty plea today, I plan not to decide
24 whether to accept or reject the plea agreement until after I
25 review the presentence report.

1 If at that time I reject the plea agreement and reject
2 your agreement with the Government to impose this
3 18-month sentence, I must give you a chance to withdraw your
4 guilty plea.

5 Do you understand that?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** If I reject the plea agreement, I must
8 also give the Government a chance to withdraw from it as well.

9 Do you understand that?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** And if a situation were to arise where I
12 rejected the plea agreement and neither you or the Government
13 chose to withdraw from it, do you understand that, regardless of
14 the sentencing guidelines calculation and regardless, even, of
15 my own calculation, I would then have the discretion to impose a
16 sentence that is more or less severe than the guidelines range,
17 as long as the sentence is not more than the statutory maximum?

18 In other words, I would be able to sentence you, in
19 that scenario, up to the maximum penalties that we discussed
20 earlier.

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** You also understand that you and the
23 Government agreed not to advocate for the application of any
24 other guideline and not to move for any departure or recommend a
25 sentence outside the guidelines, other than is set forth in the

1 agreement?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Do you have any questions about the
4 sentence that you may receive if I accept your guilty plea?

5 **THE DEFENDANT:** No, I do not.

6 **THE COURT:** Mr. Rudroff, please tell us about the
7 statute of limitations covered in paragraph 13.

8 **MR. RUDROFF:** Yes, Your Honor. Before I do, I just
9 want to point out the Rule 11(c)(1)(C) agreement also would call
10 for a three-year term of the supervised release. So as long as
11 the defendant also understands that.

12 **THE COURT:** Do you understand that, Mr. Wenke?

13 **THE DEFENDANT:** Yes, I do.

14 **THE COURT:** Give me one moment.

15 Okay. Go ahead, Mr. Rudroff.

16 **MR. RUDROFF:** Thank you, Your Honor. Under
17 paragraph 13, the defendant understands that if his guilty plea
18 is withdrawn or his conviction is vacated, whether that is by
19 appeal, motion, post-conviction, proceeding or otherwise, the
20 Government would have six months from that date to reinstate any
21 charges that are dismissed as a result of this plea agreement.

22 And the defendant agrees not to assert the statute of
23 limitations as a defense in any of those -- or in that
24 instance -- excuse me.

25 **THE COURT:** Mr. Wenke, do you understand what the

1 prosecutor just said?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** The next paragraph is paragraph 14. It's
4 entitled removal.

5 Earlier, you told me that you are a U.S. citizen.
6 This paragraph 14 says that, if you were not a U.S. citizen,
7 there could be some other consequences to you as a result of
8 your guilty plea, such as removal from the United States, denial
9 of citizenship, and denial of admission to the United States.

10 Based on what you told me earlier today, that you are
11 a U.S. citizen, these consequences would not apply to you.

12 Do you understand that?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Mr. Rudroff, please tell us next about the
15 rights the Government reserves in paragraph 15, the Government's
16 obligation in paragraph 16, and the defendant's agreement in
17 paragraph 17.

18 **MR. RUDROFF:** Yes, Your Honor.

19 Paragraph 15, the Government has reserved the right to
20 provide the probation office and the Court with all the
21 information and evidence in its possession that the Government
22 deems relevant concerning the defendant's background, character,
23 and involvement in the offenses charged and well as the
24 circumstances surrounding the charge and the defendant's
25 criminal history.

1 The Government may also respond at sentencing to any
2 statements that are made by the defendant or on his behalf, if
3 they are inconsistent with the information and evidence
4 available to the Government.

5 The Government may advocate for a specific sentence
6 consistent with the terms of the plea agreement. That includes
7 the amount of restitution or a fine in the method of payment.

8 And the Government may modify its position with
9 respect to any sentencing recommendation or a sentencing factor
10 under the guidelines, including criminal history category, if
11 subsequent to the plea agreement, the Government receives
12 previously unknown information, which includes conduct and
13 statements by the defendant subsequent to the agreement,
14 regarding the recommendation or factor.

15 In paragraph 16, the Government agrees to move to
16 dismiss Count Two of the indictment at sentencing.

17 And at paragraph 17, the defendant agrees that any
18 financial records and information that he has provided to the
19 probation office before or after sentencing will be disclosed to
20 the U.S. Attorney's Office to be used in the collection of any
21 unpaid financial obligation.

22 **THE COURT:** Mr. Wenke, do you understand what the
23 prosecutor was saying?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** By entering into this plea agreement and

1 pleading guilty, you're giving up your right to appeal to
2 conviction.

3 You're also giving up your right to collaterally
4 attack your conviction by filing a motion in this Court.

5 Do you understand that?

6 **THE DEFENDANT:** Yes.

7 **THE COURT:** You're also giving up your right to appeal
8 or collaterally attack your sentence by filing a motion in this
9 Court, as long as the sentence is within or less than your
10 agreed sentence of imprisonment that we discussed earlier.

11 Even based on facts you may learn in the future that
12 you think would justify a lesser sentence, and even if the law
13 changes in a way that you believe justifies a lesser sentence.
14 This is covered in paragraphs 26 through 27.

15 Do you understand?

16 **THE DEFENDANT:** Yes.

17 **THE COURT:** Did you discuss your right to appeal and
18 how pleading guilty affects that right with your lawyer?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** Based on that discussion and after
21 considering the issue, do you agree to give up your right to
22 appeal on the terms and conditions that I just stated?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Is the plea agreement that you signed and
25 that we've been discussing here today the complete agreement

1 between you and the Government?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Did you review the entire agreement with
4 your lawyer?

5 **THE DEFENDANT:** Yes.

6 **THE COURT:** Do you understand and agree with
7 everything in it?

8 **THE DEFENDANT:** Yes, I do.

9 **THE COURT:** Did anyone make any promises,
10 representations or guarantees to you, other than the ones in the
11 plea agreement that you signed?

12 **THE DEFENDANT:** No, they have not.

13 **THE COURT:** And do you understand and agree that this
14 agreement is the final one and takes the place of any prior
15 verbal or written agreement that you may have had with the
16 Government?

17 **THE DEFENDANT:** Yes.

18 **THE COURT:** Mr. Anzalone, did you and Mr. Wenke both
19 sign the plea agreement we've been discussing here today?

20 **MR. ANZALONE:** Yes, Your Honor.

21 **THE COURT:** Did you discuss the contents of every
22 section, subsection, paragraph and subparagraph of this
23 agreement with Mr. Wenke before you signed it?

24 **MR. ANZALONE:** Yes, I did.

25 **THE COURT:** Does the signed agreement represent the

1 entire agreement between Mr. Wenke and the Government?

2 **MR. ANZALONE:** Yes, it does.

3 **THE COURT:** Did you review with your client the facts
4 of the case and all of discovery provided by the Government?

5 **MR. ANZALONE:** Yes, Your Honor.

6 **THE COURT:** Did you discuss with Mr. Wenke the
7 potential defenses that he might have?

8 **MR. ANZALONE:** I did.

9 **THE COURT:** Did you and your client agree that it was
10 in his best interest to enter this plea?

11 **THE DEFENDANT:** Yes.

12 **THE COURT:** Do you believe he's fully entering into --
13 excuse me.

14 Do you believe that he's entering into this plea
15 freely and voluntarily with full knowledge of the charge and
16 consequences of the plea?

17 **MR. ANZALONE:** Yes, Your Honor.

18 **THE COURT:** Were any promises, representations or
19 guarantees, other than what's in the signed written plea
20 agreement, made to you or Mr. Wenke?

21 **MR. ANZALONE:** No.

22 **THE COURT:** If I accept the plea agreement, I will
23 impose a sentence that includes a term of imprisonment of
24 18 months. And it includes that supervised release provision as
25 well.

1 Other than that, did you promise your client a
2 particular sentence if I accepted his guilty plea?

3 **MR. ANZALONE:** No, Your Honor.

4 **THE COURT:** Is there any reason I should not accept
5 Mr. Wenke's plea?

6 **MR. ANZALONE:** Not that I'm aware of.

7 **THE COURT:** Do you join in the waiver of jury trial
8 and concur in the plea?

9 **MR. ANZALONE:** Yes, I do.

10 **THE COURT:** Mr. Rudroff, other than what's contained
11 in the signed agreement, did the Government make any promises,
12 representations or guarantees to either Mr. Wenke or
13 Mr. Anzalone?

14 **MR. RUDROFF:** No, Your Honor.

15 **THE COURT:** Does the Government also waive its right
16 to a jury trial?

17 **MR. RUDROFF:** Yes, Your Honor.

18 **THE COURT:** Mr. Wenke, are you satisfied with
19 Mr. Anzalone and the representation that he's provided to you?

20 **THE DEFENDANT:** Yes.

21 **THE COURT:** Did you tell him everything that you know
22 about your case?

23 **THE DEFENDANT:** Yes.

24 **THE COURT:** Do you believe that he fully considered
25 any defense you may have to this case?

1 **THE DEFENDANT:** Yes.

2 **THE COURT:** Do you believe that he fully advised you
3 concerning this case and the consequences of this plea?

4 **THE DEFENDANT:** Yes.

5 **THE COURT:** Did you have enough time to discuss your
6 case with Mr. Anzalone?

7 **THE DEFENDANT:** Yes, I did.

8 **THE COURT:** Did you answer all of my questions here
9 today truthfully?

10 **THE DEFENDANT:** Yes.

11 **THE COURT:** Have you understood everything I've said
12 and every question that you've answered?

13 **THE DEFENDANT:** Yes.

14 **THE COURT:** Do you believe that you're competent to
15 decide to plead guilty?

16 **THE DEFENDANT:** Yes, I am.

17 **THE COURT:** And is there any reason I should not
18 accept your guilty plea?

19 **THE DEFENDANT:** I do not believe so.

20 **THE COURT:** Do you understand that if I accept your
21 guilty plea, the only thing remaining in your case will be
22 sentencing, which will include imprisonment?

23 Do you understand that?

24 **THE DEFENDANT:** Yes.

25 **THE COURT:** Having in mind everything we've discussed

1 so far today, including the rights you'll give up and all other
2 consequences to you, do you want to plead guilty?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** Mr. Rudroff, Mr. Anzalone, do you both
5 agree that I've complied with Rule 11?

6 **MR. RUDROFF:** Yes, Your Honor.

7 **MR. ANZALONE:** Yes, Your Honor.

8 **THE COURT:** Mr. Wenke, in Case Number 22-CR-35, how do
9 you plead to Count One of the indictment, cyberstalking?

10 **THE DEFENDANT:** Guilty.

11 **THE COURT:** In United States versus Luke Marshall
12 Wenke, I questioned Mr. Wenke and his counsel on the offer of
13 his plea of guilty to Count One of the indictment of felony.

14 He and his counsel have advised me that they conferred
15 about the offered plea of guilty, all aspects of the charge
16 against Mr. Wenke and any defenses he may have.

17 I observed the intelligence, demeanor and attitude of
18 Mr. Wenke while answering questions and I observed that
19 Mr. Wenke does not appear to be under the influence of any
20 medicine, drug or other substance that might affect his judgment
21 or actions in any manner.

22 Based upon all of that, I find that Mr. Wenke is fully
23 competent and capable of entering an informed plea and that he's
24 aware of his Constitutional rights, the nature of the charge
25 against and the consequences of the plea.

1 I also find that the guilty plea is knowingly,
2 voluntarily and intelligently made, in light of Mr. Wenke's
3 complete understanding and appreciation of the nature of the
4 charge and the consequences of the plea and his Constitutional
5 rights.

6 I further find that the plea is supported by an
7 independent factual basis containing each essential element of
8 the crime.

9 I therefore accept Mr. Wenke's guilty plea and I defer
10 acceptance of the plea agreement pursuant to Rule 11(c)(3)(A).
11 Mr. Wenke is adjudged guilty of Count One.

12 A written presentence report will be prepared by the
13 probation office to assist the Court.

14 Mr. Wenke, you will be asked to meet with the
15 probation officer and to provide information for that report.
16 Your lawyer should attend.

17 Both of you will be able to read the report and file
18 any objections before the sentencing hearing.

19 You will be able to submit any additional information
20 and motions that are consistent with the terms of the plea
21 agreement and the plea that you just entered.

22 You and your lawyer will be able to speak on your own
23 behalf at the sentencing hearing, and victims will be entitled
24 to speak as well.

25 Mr. Wenke is referred to the probation officer for a

1 report. And the date for sentencing will be what, Ms. Henry?

2 **THE CLERK:** August 18th at 10:00 a.m.

3 **MR. ANZALONE:** Thank you.

4 **MR. RUDROFF:** Thank you.

5 **THE COURT:** Okay. August 18, 10 a.m. You're all
6 ordered to appear on that date and time without any further
7 notice or order of the Court.

8 Mr. Rudroff, are there any victims who wish to be
9 heard as to Mr. Wenke's status pending sentencing?

10 **MR. RUDROFF:** Your Honor, there are no victims who
11 wish to be heard at this time.

12 It's the Government's position that the defendant
13 should stay detained in this case. He now stands convicted of
14 cyberstalking, which is a crime of violence.

15 To my knowledge, there are no exceptional reasons
16 under 3145(c) why the defendant should be released.

17 And, lastly, I would point out that if the Court is
18 inclined to accept the plea agreement as it currently stands,
19 the defendant is looking at 18 months incarceration.

20 **MR. ANZALONE:** Based on the terms of the plea
21 agreement, I have no request for the Court at this time.

22 **THE COURT:** Okay. So he'll remain remanded pending
23 sentencing. I don't think I have anything else.

24 Counsel, do either of you?

25 **MR. RUDROFF:** No, Your Honor.

1 **MR. ANZALONE:** No, Your Honor. Thank you.

2 **THE COURT:** Okay. Have a good day. Thank you.

3 **MR. RUDROFF:** You, too.

4 **MR. ANZALONE:** Thank you.

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6 (Proceedings concluded at 2:40 p.m.)

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2 In accordance with 28, U.S.C., 753(b), I certify that these
3 original notes are a true and correct record of proceedings in
4 the United States District Court for the Western District of
5 New York before the Honorable John L. Sinatra, Jr.

6
7
8
9
10 s/ Bonnie S. Weber
Signature

May 22, 2025
Date

11
12 **BONNIE S. WEBER, RPR**

13 Official Court Reporter
14 United States District Court
15 Western District of New York
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